IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 283 OF 1999.

Bajaj Auto Ltd. ... Applicant.

V/s.

Commissioner of Income-tax,
Central II, Mumbai .. Respondent.

Shri A.N. Kotangale with D.A. Dubey i/b K.C.Sidhwa
for the applicant.

Ms. V.B. Patel for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 25.7.2005

P.C. :

. By this reference under section 256 of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the proportionate salary paid to the employees during their stay abroad was not to be excluded under the provisions of section 40A(5)(b)(i), while computing the disallowance under section 40A(5) of the Income-tasx Act, 1961?"

. Learned counsel for the parties agreed that

the above issue is covered by the judgment of this Court in the case of **Colour Chem Ltd. vs. C.I.T. (1999) 238 171,** wherein this Court ruled that salary of employees of the assessee for the period of their stay outside India in the ordinary course of employement should be excluded from the total salary while computing disallowance under section 40A(5) of the Income-tax Act,1961. In this view of the matter, we answer the question in the negative i.e.

in favour of the assessee and against the revenue.

. Reference stands disposed of with no order

as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**